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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,013	11/24/2003	Francesc Casas Salva	MDR-0004	9165
34610	7590	06/08/2005	EXAMINER CHAMBERS, TROY	
FLESHNER & KIM, LLP P.O. BOX 221200 CHANTILLY, VA 20153			ART UNIT 3641	
PAPER NUMBER				

DATE MAILED: 06/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/719,013	SALVA, FRANCESC CASAS	
	Examiner	Art Unit	
	Troy Chambers	3641	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17, 23, 24, 27, 38-41, 45 and 46 is/are rejected.
- 7) ☒ Claim(s) 18-22, 25-36, 42-44, 47 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 17, 23, 24 and 27 are rejected under 35 U.S.C. 102(e) as being anticipated by Tiberious et al. (2003/0047174). As to claim 17, Tiberious et al. discloses a barrel, trigger and stock zones (fig. 4) a pressurized gas cylinder (60) connected to a valve chamber (26)., and a valve element (46) configured to connect to the valve chamber and a firing chamber (34)., wherein the valve element is configured to be moved by an elastic means towards a closed position (fig. 4) and an open position (fig. 5) by impact of the hammer (bolt) and a sealing device (41).
3. As to claim 23, disclosed is an ammunition store (16)*, a plurality of pellets (fig. 5); a push (96) and a release mechanism (33).
4. As to claim 24, disclosed is a spring (96).
5. As to claim 37, disclosed are channels (fig. 4).
6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 3641

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 38-41, 45 and 46 are rejected under 35 U.S.C. 102(b) as being anticipated by Maeda (6497229).
8. As to claim 38, Maeda discloses a firing chamber, a barrel', a trigger; a sliding cover (7); an ammunition magazine (2)., a gas cylinder (27) and a sealing device (25).
9. As to claim 39, disclosed is the sealing device is initiated when the trigger is pressed.
10. As to claim 40, disclosed is a rear wall and a perimeter edge (5g. 5).
11. As to claim 41, disclosed is an interior surface of the cylindrical wall is configured to define a continuation portion of the barrel (6) and an outer surface of the wall configured to fit within the interior surface of the firing chamber (5).
12. As to claim 45, disclosed is the pellet released from the firing chamber when the sealing device is fully engaged.
13. As to claim 46, disclosed are a plurality of pellets (W) arranged in a column', a push mechanism (3) and a release mechanism (4).

Response to Arguments

14. Applicant's arguments filed 03/03/05 have been fully considered but they are not persuasive. Applicant argues, "Tiberius fails to disclose a hammer and a valve element that is configured to be moved from a closed position to an open position by an impact of the hammer" and "...Maeda...is not configured to be partially inserted into the firing chamber." However, the [a)statements of intended use or field of use, b)"adapted to" or "adapted for" clauses, c) "wherein" clauses, or d) "whereby"]clauses are essentially

Art Unit: 3641

method limitations or statements of intended or desired use. Thus, these claims as well as other statements of intended use do not serve to patentably distinguish the claimed structure over that of the reference. See *In re Pearson*, 181 USPQ 641; *In re Yanush*, 177 USPQ 705; *In re Finsterwalder*, 168 USPQ 530; *In re Casey*, 512 USPQ 235; *In re Otto*, 136 USPQ 458; *Ex parte Masham*, 2 USPQ 2nd 1647.

See MPEP § 2114 which states:

A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from the prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ 2nd 1647

Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than functions. *In re Danly*, 120 USPQ 528, 531.

Apparatus claims cover what a device is not what a device does. *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 15 USPQ2d 1525, 1528.

As set forth in MPEP § 2115, a recitation in a claim to the material or article worked upon does not serve to limit an apparatus claim.

In any event, with respect to Tiberius, the bolt and bolt head impact the spring and shouldered surfaces of the gun used to position the spring; with respect to Maeda, claim 38 does expressly require the barrel to be inserted into the firing chamber.

Allowable Subject Matter

15. Claims 18-22, 25-36, 42-44 and 47 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Troy Chambers whose telephone number is (571) 272-

Art Unit: 3641

6874 between the hours of 7:00 a.m. to 3:30 p.m., M-F. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Carone, can be reached at (571) 272-6875.

T.C.
06/06/05


MICHAEL J. CARONE
SUPERVISORY PATENT EXAMINER